

Chapter 3

MEMORANDA OF UNDERSTANDING

3-1 Background. A Memorandum of Understanding (MOU) is a written agreement which establishes the basis for mutual cooperation and coordination between CAP and supported organizations and agencies. An MOU is appropriate when an organization or agency has a recurring need for CAP services and support. CAP units negotiating new or revised MOUs should utilize available legal officer services to the greatest extent possible. One of the most frequent concerns of state and local governments when they are negotiating the language of an MOU with CAP is properly identifying who will provide general liability and worker's compensation coverage for CAP activities performed pursuant to the MOU. CAPR 900-5, "CAP Insurance and Benefits," contains information regarding CAP liability and workers compensation insurance issues. The language, incorporated into the sample MOU found at attachment _____ to this regulation, is designed to clarify liability issues arising from CAP activities performed in accordance with a state/local MOU. The sample MOU contains standard missions which have been reviewed and pre-approved by HQ CAP-USAF and HQ CAP, and provides for liability (FTCA) and worker's compensation (FECA) coverage for CAP members. For reasons discussed later in this chapter, use of the sample MOU without adding non-standard missions is highly recommended. A simplified and more expeditious MOU approval process will obviously improve CAP's service to state and local governments, as well as to other organizations. **MOUs should not be signed and approved by supported governmental or non-governmental organizations until after HQ CAP-USAF and HQ CAP have approved them as provided for in this chapter.**

3-2 Air Force Assigned Mission Status for National, Wing and Local MOU Missions.

a. General. It is important for CAP commanders and members to understand that Air Force assigned mission status may be extended to national, state, and local MOU missions. The basic USAF/CAP MOU provides that Air Force non-reimbursed assigned mission status will apply to:

"support missions requested by a state/local government or private agencies which are specified in memoranda of understanding or letters of agreement that have been signed and approved by appropriate Air Force authority."

b. Implementation. The most significant aspect of Air Force assigned mission status (regardless of whether it is reimbursed or non-reimbursed) is that it serves to extend CAP and its members protection under both the Federal Tort Claims Act (FTCA) for general liability coverage and the Federal Employee's Compensation Act (FECA) for

worker's compensation (for cadets 18 and older and senior members) while engaged in such missions.

3-3 National, Wing, Local MOUs.

a. National MOUs. An MOU which involves CAP operations in more than a single state or with a federal agency on a national level or non-governmental organization is considered a national MOU. MOUs between wings and federal agencies to be performed within a wing may be processed by HQ CAP and HQ CAP-USAF as either a wing or national MOU depending on the scope of operations. An example of an agreement with a Federal agency that may be processed as a wing rather than a National MOU is one involving only a district office of the US Army Corps of Engineers or a district office of the Bureau of Land Management. National MOUs such as those with DEA, Customs, FEMA, the Red Cross, and the Salvation Army, must be staffed by HQ CAP-USAF and HQ CAP, and approved by the CAP National Executive Committee (NEC) before being signed by the CAP National Commander and HQ CAP-USAF/CC. National MOUs may not be supplemented by any CAP unit without specific written approval of HQ CAP/EX and HQ CAP-USAF/CC. Copies of current national MOUs will be maintained by both HQ CAP/CLC and HQ CAP-USAF/JA.

b. Wing MOUs.

(1) General. An MOU which establishes a recurring operational and/or training relationship between a CAP wing and a state or state agency (including the District of Columbia and the Commonwealth of Puerto Rico), is considered a wing MOU. Every CAP wing is required to maintain a current MOU with the state in which it operates. To qualify as a current MOU, it must be processed and approved under the procedures provided in this chapter, and must be reviewed and certified as current by the wing commander every three years after initial approval. A copy of the MOU and all subsequent certifications must be on file with the HQ CAP Corporate Legal Counsel (HQ CAP/CLC) and HQ CAP-USAF/JA. Wings that do not have a current MOU with the state must submit a statement of reasons through their region commander to the national commander with a copy to the HQ CAP/CLC. Normally each CAP wing has only one wing MOU with its parent state, though sometimes it is necessary for a wing to negotiate separate agreements with several state agencies. A wing MOU should define the various services and support to be provided by the wing, as well as specifying what, if any, support the state will furnish to the wing. **Wing MOUs should be forwarded to HQ CAP/CLC for staffing and approval before they are signed on behalf of the state.**

(2) Sample MOU. In order to ensure Air Force mission status for missions flown pursuant to a wing MOU, wings should use the sample MOU found at attachment _____ to this regulation. The sample MOU describes those basic missions the wing may perform for the state which have been pre-authorized by HQ CAP-USAF/CC as Air Force designated non-reimbursed (Category B) missions. Accordingly, use of the sample

MOU will simplify HQ CAP-USAF and HQ CAP review as well as expedite approval. The frequently difficult issue of state reimbursement and other support for CAP is left open for the wing and state to negotiate. Adding non-standard missions into the MOU should be avoided unless absolutely necessary.

(3) Corporate Missions. If the wing incorporates non-standard missions into a wing MOU, they will be considered corporate missions upon approval of the MOU by HQ CAP. The most significant aspect of corporate mission status is that CAP's liability insurance, both aviation and general liability, provides protection for CAP's activities unless the state provides coverage. Importantly, corporate status means that no FECA or other worker's compensation coverage is available for CAP members (unless the state provides some). If the state insists on incorporating non-standard missions into a wing MOU, it should be highly encouraged to provide liability and worker's compensation for CAP and CAP members.

(4) Transportation of State Officials. Transportation of non-members in CAP aircraft is authorized only as specifically provided in CAPR 60-1. A wing MOU may provide for additional transportation support for state officials, but it must explicitly specify that pre-approval of every transportation flight has to be obtained from HQ CAP/DO and HQ CAP-USAF/XO.

c. Local MOUs.

(1) General. An MOU which addresses a relationship between a CAP unit below wing level and a local government below the state level, or another organization, is considered a local MOU. Local MOUs frequently involve counties or other local governments which have recurring requirements for CAP support. Sundown patrols of coastal areas and lakes are common missions addressed in local MOUs.

(2) Sample MOU. Paragraphs 3-3 b (2) (3) and (4) of this Chapter apply to local MOUs with respect to (1) using the sample MOU to the greatest extent possible, (2) obtaining Air Force designated non-reimbursed mission status for missions, and (3) not incorporating non-standard missions into the MOU. Restrictions on transporting non-CAP members also apply to local MOUs.

3-4. Approval Process for Wing & Local MOUs.

a. Wing MOUs. Wing MOUs must be approved by the wing commander and forwarded to HQ CAP/CLC for staffing; a copy must also be provided to the region commander. Since wing MOUs serve to confer Air Force designated mission status, they must be approved by both HQ CAP/EX and by HQ CAP-USAF/CC. Following HQ CAP-USAF and HQ CAP coordination and approval, the MOU will be returned to the wing commander so he/she may obtain the signature of an appropriate state official. Once the MOU has been signed by all the parties, it must be forwarded to HQ CAP/CLC. Copies of current wing MOUs will be maintained by both HQ CAP/CLC and HQ CAP-

USAF/JA. Do not have any wing MOU signed by a state official until after it has been approved by HQ CAP-USAF and HQ CAP.

b. Local MOUs. Local MOUs must be signed by the wing commander and then forwarded to HQ CAP/CLC for processing; a copy must also be provided to the region commander. All Local MOUs must be approved by the HQ CAP/EX. If Air Force designated mission status is requested, the MOU must also be approved by HQ CAP-USAF/CC. Following HQ CAP-USAF and HQ CAP action, the local MOU will be returned to the wing commander so he/she may obtain the signature of an appropriate representative of the supported agency, and maintain the completed memorandum in wing files.

3-5. Flight Release of MOU Missions. Wing commanders ensure all wing flying personnel and flight release officers (FROs) are aware of which MOU missions have been approved as Air Force designated missions by HQ CAP-USAF/CC. Additionally, wing commanders must implement adequate procedures to ensure Air Force designated missions flown by wing personnel are appropriately flight released and flown in accordance with CAPR 60-1. Similarly, wing commanders must ensure that all wing flying personnel and FROs understand which MOU missions are considered corporate missions and that such missions are flight released and flown accordingly.

SAMPLE MOU

This attachment consists of a sample standard MOU for CAP wings and subordinate units to use with States or other supported agencies. It is particularly important to accurately reference standard mission listings (See CAPR 60-1, Attachment 7) to expedite CAP-USAF's review and approval when Air Force assigned mission status is sought for missions referenced in the MOU. Although HQ CAP intends for subordinate organizations to utilize the Standard MOU with as little modification as possible, if modifications are contemplated, wings should make maximum use of their wing legal officer when involved in negotiations. Wing legal officers should always be involved in the negotiation and drafting of any agreement or MOU where CAP will be a signatory. National Headquarters highly encourages direct contact with the CAP/CLC in matters involving insurance and liability coverage.

MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

THE CIVIL AIR PATROL, INC. BY THE _____ WING AND

(STATE AGENCY)

- 1. Purpose** The purpose of this Memorandum of Understanding (MOU) is to set forth, define and establish mutual agreements, understandings, and obligations by and between the [State or State Agency Charged With Emergency Services Responsibilities (*State Agency*)] and the (*Wing*) of the Civil Air Patrol, Inc.(CAP).
- 2. The Civil Air Patrol, Inc.** The (*Wing*), Civil Air Patrol is a subordinate unit of CAP, a federally chartered corporation under Title 36 U.S.C. 201-208, and the volunteer civilian auxiliary of the United States Air Force (USAF). One of CAP's principal functions is to assist state and local governments in responses to natural disasters and other emergencies. CAP's ability to quickly generate and organize large numbers of highly trained and motivated volunteers with ready access to up-to-date equipment results in extremely cost effective support to government agencies.
- 3. The (State Agency)** The (*State Agency*), is responsible for coordination of all emergency operations within (*The State*), including the selection and utilization of available resources and organizations capable of rendering assistance.

4. Air Force Authorized CAP Missions for (the State) The (*Wing*) agrees to provide the (*State Agency*) with volunteer personnel, equipment and other resources at its disposal to assist (*The State*) and local political subdivisions respond to the following types of emergencies:

a. Air and Ground Search and Rescue (SAR) Operations.

(1) When CAP assistance for search and rescue operations is needed, the (*State Agency*) Director, or his/her designated agent, shall immediately contact the Air Force Rescue Coordination Center (AFRCC), at 1(800) 851-3051, or DSN 574-8119, and request Air Force reimbursed mission authorization for the (*Wing*) to initiate emergency support operations. AFRCC may issue Air Force mission numbers in support of life saving efforts, only when the (*State Agency*) has no other adequate resources readily available.

(2) In the event Air Force authorities are not able to grant Air Force assigned reimbursed mission authorization, the (*Wing*) may nevertheless conduct SAR operations as an Air Force assigned non-reimbursed mission, if so requested by the (*State Agency*). Paragraph 6 of this MOU provides guidance regarding (*State Agency*) reimbursement to CAP when an Air Force assigned non-reimbursed mission is requested.

b. Disaster Relief (DR) Operations.

(1) When (*Wing*) assistance is desired in major disasters the (*State Agency*) should immediately contact the Air Force National Security Emergency Preparedness (AFNSEP) duty officer, at 1(800) 366-0051, or DSN 367-4342, to request Air Force assigned reimbursed mission authorization for the (*Wing*) to initiate emergency response operations. AFNSEP may grant such authorization in "imminently serious" situations requiring immediate action in order to save human lives, prevent human suffering, and/or mitigate great property damage, or in "Presidential Declared" disasters. A verbal request for CAP disaster relief assistance must be followed as soon as possible by a written request to AFNSEP.

(2) In a natural disaster which has not been deemed "imminently serious" nor "Presidential Declared," and for which the Air Force is not able to grant Air Force assigned reimbursed mission authorization, the (*Wing*) may nevertheless perform disaster relief operations when requested by the (*State Agency*) as an Air Force assigned non-reimbursed mission.

(3) Both the (*Wing*) and (*State Agency*) agree to maintain continual and effective liaison with the Air Force Emergency Preparedness Liaison Officer (EPLO) assigned to (*The State's*) Adjutant General's Office and with the CAP liaison officer assigned to the (*Wing*) in order to ensure the training necessary for effective CAP participation in disaster relief missions is made available to, and is fully utilized by, both the (*Wing*) and the (*State Agency*).

c. Other Authorized (*Wing*) Missions (Non-Air Force Reimbursed):

(1) Environmental Protection Operations. The (*Wing*) may assist (*The State*) through the (*State Agency*) and appropriate federal agencies, to respond to environmental disasters. In addition, at the request of the (*State Agency*) or federal agencies, the (*Wing*) may conduct environmental surveys of rivers, forests and/or wildlife.

(2) State and Regional Disaster Airlift (SARDA) Operations. The (*Wing*) may conduct appropriate training and may engage in SARDA missions in support of governing FAA programs.

(3) Organ and Tissue Transportation Operations. At the request of the (*State Agency*), the (*Wing*) may fly missions to transport human organs and/or tissue, including organs, bone marrow, blood, and serum, as humanitarian missions. Such missions shall only be conducted by CAP in situations where alternative commercial means of transportation are not capable of satisfying the underlying requirement necessitating the organ/tissue transportation request.

(4) Aerial Reconnaissance. At the request of the (*State Agency*), the (*Wing*) may conduct aerial reconnaissance of ground conditions and surface traffic. CAP members may not however, engage in surveillance or other law enforcement activities.

(5) Transportation of Emergency Equipment and Supplies. At the request of the (*State Agency*), the (*Wing*) may provide light air and ground transport of medical supplies, personnel, shelters, etc., in response to a state emergency.

(6) Aerial Radiological Monitoring. At the request of the (*State Agency*), the (*Wing*) may conduct aerial sampling of radiation levels surrounding nuclear power plants/reactors.

[NOTE: DO NOT INCORPORATE THIS PROVISION INTO THE MOU UNLESS THE WING IS ADEQUATELY MANNED, EQUIPPED, AND TRAINED TO SAFELY PERFORM AERIAL RADIOLOGICAL MONITORING]

(7) Transportation of (State Agency) Officials and Other Non-CAP Members. The (Wing) may carry (State Agency) officials as passengers on CAP Aircraft as authorized by CAPR 60-1. Pre-approval to carry any other non-CAP passenger aboard a CAP flight must be obtained from HQ CAP-USAF/XO and HQ CAP/DO.

[NOTE: DO NOT INCORPORATE ANY PROVISION IN THE MOU WHICH PURPORTS TO AUTHORIZE CAP TO PERFORM "SUCH OTHER MISSIONS AS AGREED UPON"]

5. Command and Control Immediate command and control over all CAP resources and personnel employed in accordance with this MOU, shall rest with CAP at all times. Any party to this MOU may suspend or terminate CAP missions conducted pursuant to it, at any time and for any reason, to include but not limited to, unsafe operating conditions. All CAP operations conducted pursuant to this MOU shall be conducted in strict accordance with applicable CAP directives.

6. Reimbursement If the Air Force authorizes a reimbursed mission , the (Wing) shall not seek any additional reimbursement from the (State Agency).

[NOTE: FOR AIR FORCE NON-REIMBURSED MISSIONS, INCLUDE LANGUAGE IN THE MOU WHICH SETS FORTH THE AGREEMENT IF ANY, REGARDING STATE REIMBURSEMENT TO CAP.]

7. Air Force Assigned Missions Approval of this MOU by the CAP-USAF Commander serves to confer Air Force assigned (reimbursed or non-reimbursed) mission status upon missions listed in paragraph 4 above. Air Force assigned mission status serves to confer Federal Tort Claims Act (FTCA) and Federal Employees Compensation Act (FECA) coverage on eligible CAP members. FTCA and FECA coverage applies to both Air Force assigned reimbursable missions and Air Force assigned non-reimbursable missions.

8. Corporate Missions Any CAP mission not approved by HQ CAP-USAF either directly, or through this MOU, is considered a "Corporate Mission." All such corporate missions authorized by this MOU shall be listed and described separately at attachment _____ to this MOU. CAP corporate missions are not covered by either the FTCA nor the FECA. CAP's aviation and general liability insurance policies cover CAP corporate missions.

[NOTE: IF THE STATE WILL PROVIDE ANY LIABILITY OR WORKER'S COMPENSATION COVERAGE FOR CAP ACTIVITIES CONDUCTED PURSUANT TO THIS MOU, DESCRIBE SUCH COVERAGE HERE]

9. Effective Date This Memorandum of Understanding is not effective unless approved by HQ CAP and HQ CAP-USAF. It must be signed by an authorized representative of (*The State*), and shall remain in effect for a period of three years from its effective date. It may be extended for additional three year periods with the approval of the (*Wing*) and the (*State Agency*). Any signatory may terminate this agreement by delivering a sixty-day written notice of termination, signed by its designated representative, to the designated representatives of each of the other the signatories.

(*Wing*)

Date: _____

By: _____
(*Name*)
Commander, (*Wing*)

(*State Agency*)

Date: _____

By: _____
(*Name*)
(*Position Title*)

CAP National Headquarters

Date: _____

By: _____
(*Name*)
Executive Director, CAP

CAP-USAF

Date: _____

By: _____
(*Name*)
Commander, CAP-USAF